

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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In re:

The RHODES COMPANIES, LLC, aka
"Rhodes Homes," et al.,
Reorganized Debtors.

Case No. 2:12-cv-01272-MMD-VCF

Bankruptcy Case No. BK-09-14814-LBR
(Jointly Administered)
Chapter 11
Adversary No. 12-01099-LBR

ORDER

THE LITIGATION TRUST OF THE
RHODES COMPANIES, LLC, et al.,
Plaintiffs,
v.
JAMES M. RHODES, et al.,
Defendants.

I. SUMMARY

Before the Court are the parties' objections to the Bankruptcy Court's Report and Recommendation ("R&R") addressing the Rhodes Defendants' Joint Motion for Partial Summary Judgment (case no. 12-01099, dkt. no. 198), the Litigation Trust's Countermotion for Partial Summary Judgment on Count 14 (Declaratory Judgment) (case no. 12-01099, dkt. no. 215), and the Rhodes Defendants' Objection to Litigation Trust's Request for Judicial Notice (case no. 12-01099, dkt. no. 286). (Dkt. no. 25.) For the reasons set forth below, the objections are overruled and the R&R is adopted in full.

II. BACKGROUND

The Litigation Trust of the Rhodes Companies, LLC, et al. (the "Litigation Trust" or "Debtors") operated a home-building business known as "Rhodes Homes." In late 2005, James Rhodes and his affiliated entities (the "Rhodes Defendants") allegedly caused the

1 Litigation Trust to enter into an “ill-advised” \$500 million loan, and then misappropriated
2 approximately \$110 million of the loan proceeds. The Litigation Trust asserts that \$38.5
3 million of the misappropriated funds went towards paying Mr. Rhodes’ personal income
4 tax obligations. Additionally, the Litigation Trust alleges that the Rhodes Defendants
5 proceeded to delay their bankruptcy filings in order to launch a new home-building
6 company in direct competition with them. The Litigation Trust asserts that this resulted in
7 their becoming over-leveraged, under-capitalized, and insolvent.

8 On March 31, 2009, and April 1, 2009 (collectively, “Petition Date”), each of the
9 debtors in this case commenced a voluntary case with the Bankruptcy Court under
10 Chapter 11 of Title 11 of the United States Bankruptcy Code.

11 On February 18, 2010, the First Lien Steering Committee filed the Third Amended
12 Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for the Debtors
13 (“TAP”). The TAP established the Litigation Trust to enforce all rights to commence and
14 pursue, as appropriate, any and all causes of action, whether arising before or after the
15 Petition Date.

16 On March 12, 2010, the Bankruptcy Court entered an order confirming the TAP.
17 Under the Confirmation Order, the TAP was substantially consummated on the “Effective
18 Date,” and Notice of the Effective Date was filed by the First Lien Steering Committee on
19 April 1, 2010.

20 On or about May 11, 2012, the Litigation Trust filed a Complaint in *In re the*
21 *Rhodes Companies, LLC.*, against Defendants. (Case no. 12-01099, dkt. no. 1.) The
22 Complaint asserts sixteen (16) causes of action, involving alleged breach of fiduciary
23 duty, alter ego, and allegedly fraudulent conveyances.

24 On July 17, 2013, Defendants filed a Motion to Withdraw Reference. (Dkt. no. 1.)
25 This Court denied the Motion to Withdraw Reference on November 7, 2012. (Dkt. no.
26 20.)

27 The Bankruptcy Court subsequently considered the Rhodes Defendants’ Joint
28 Motion for Partial Summary Judgment (case no. 12-01099, dkt. no. 198), the Litigation

1 Trust's Countermotion for Partial Summary Judgment on Count 14 (Declaratory
2 Judgment) (case no. 12-01099, dkt. no. 215), and the Rhodes Defendants' Objection to
3 the Litigation Trust's Request for Judicial Notice (case no. 12-01099, dkt. no. 286). In
4 their Motion, the Rhodes Defendants sought partial summary judgment on the following
5 claims in the Complaint: 1, 2, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 16. The Litigation
6 Trust's Motion sought summary judgment on Count 14 alone. On July 1, 2013, the
7 Bankruptcy Court issued its R&R. (Dkt. no. 25.) The Bankruptcy Court recommended
8 Defendants' Motion be granted as to parts of counts 1, 2, 5-9, 11-13. The Court further
9 recommended that Defendants' Motion be granted as to counts 14 and 15 in their
10 entirety, and denied as to count 16 in its entirety. Because the Litigation Trust only
11 sought summary judgment on count 14, its motion was summarily denied. Finally, the
12 Bankruptcy Court recommended that the Rhodes Defendants' Objection to the Litigation
13 Trust's Request for Judicial Notice be granted.

14 Both parties filed objections to the R&R. The Rhodes Defendants challenge the
15 Bankruptcy Court's determination regarding count 16 (dkt. no. 26), and the Litigation
16 Trust challenges its determination regarding counts 1, 2, and 14 (dkt. no. 28). The Court
17 has reviewed the objections, as well as the parties' responses (dkt. nos. 31, 34), and has
18 considered the arguments made during the December 19, 2013, hearing.

19 **III. LEGAL STANDARD**

20 **A. Standard of Review**

21 Review of a Bankruptcy Court's Report and Recommendation in a non-core
22 proceeding is subject to Federal Rule of Bankruptcy Procedure 9033. "The district judge
23 shall make a de novo review upon the record or, after additional evidence, of any portion
24 of the bankruptcy judge's findings of fact or conclusions of law to which specific written
25 objection has been made in accordance with this rule." Fed. R. Bankr. P. 9033(d). In
26 conducting de novo review, the district court gives no deference to the Bankruptcy Court.
27 "The district judge may accept, reject, or modify the proposed findings of fact or

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1 conclusions of law, receive further evidence, or recommit the matter to the bankruptcy
2 judge with instructions." *Id.*

3 **B. Summary Judgment**

4 The purpose of summary judgment is to avoid unnecessary trials when there is no
5 dispute as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18
6 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,
7 the discovery, and disclosure materials on file, and any affidavits "show there is no
8 genuine issue as to any material fact and that the movant is entitled to judgment as a
9 matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is "genuine"
10 if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for
11 the nonmoving party and a dispute is "material" if it could affect the outcome of the suit
12 under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).
13 Where reasonable minds could differ on the material facts at issue, however, summary
14 judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir.
15 1995). "The amount of evidence necessary to raise a genuine issue of material fact is
16 enough 'to require a jury or judge to resolve the parties' differing versions of the truth at
17 trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (*quoting First Nat'l*
18 *Bank v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). In evaluating a summary
19 judgment motion, a court views all facts and draws all inferences in the light most
20 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793
21 F.2d 1100, 1103 (9th Cir. 1986).

22 The moving party bears the burden of showing that there are no genuine issues
23 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). "In
24 order to carry its burden of production, the moving party must either produce evidence
25 negating an essential element of the nonmoving party's claim or defense or show that
26 the nonmoving party does not have enough evidence of an essential element to carry its
27 ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
28 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56's requirements,

1 the burden shifts to the party resisting the motion to “set forth specific facts showing that
2 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may
3 not rely on denials in the pleadings but must produce specific evidence, through
4 affidavits or admissible discovery material, to show that the dispute exists,” *Bhan v. NME*
5 *Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show
6 that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am.*, 285
7 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). “The mere existence of a
8 scintilla of evidence in support of the plaintiff’s position will be insufficient.” *Anderson*,
9 477 U.S. at 252.

10 **IV. DISCUSSION**

11 **A. Counts 5–9, 11–13 and 15 and Request for Judicial Notice**

12 The Bankruptcy Court recommended that Defendants’ Motion be granted as to
13 parts of counts 5-9, 11-13 and count 15 in its entirety. Neither party has objected to
14 these recommendations. Nor has the Litigation Trust objected to the Bankruptcy Court’s
15 granting of the Rhodes Defendants’ Objection to the Litigation Trust’s Request for
16 Judicial Notice. This Court, therefore, summarily adopts the Bankruptcy Court’s
17 recommendations regarding these counts and the Request for Judicial Notice.

18 **B. Counts 1–2**

19 Count 1 involves a claim for breach of fiduciary duty against Sedora Holdings,
20 Sagebrush Enterprises, and James Rhodes and Count 2 alleged a claim against Rhodes
21 for aiding and abetting a breach of fiduciary duty. (Case no. 12-01099, dkt. no. 1 at 41-
22 45.) The Rhodes Defendants sought summary judgment on parts of Counts 1 and 2,
23 arguing that claims involving acts that occurred before March 31, 2006 — three years
24 prior to the petition date — are time barred. (See dkt. no. 25 at 7.) The Bankruptcy Court
25 agreed and recommended summary judgment on claims premised on acts that occurred
26 before March 31, 2006. (See *id.* at 5-10.) The Litigation Trust objects to the Bankruptcy
27 Court’s recommendation and argues that the statute of limitations has not run under the
28 adverse domination doctrine. (See dkt. no. 28 at 24-28.)

1 Counts 1 and 2 are governed by a three-year statute of limitations that begins to
2 run when an aggrieved party discovers the facts constituting the wrong. See N.R.S.
3 § 11.190(3)(d). Under Nevada law, a discovery by a corporate officer or agent can be
4 imputed to the corporation ("imputation doctrine"). See *In re Amerco Derivative Litig.*,
5 252 P.3d 681, 695 (Nev. 2011). The imputation doctrine is triggered when an agent
6 obtains knowledge "while acting in the course of his employment and within the scope of
7 his authority" and the corporation is responsible for this knowledge even if "the officer or
8 agent does not in fact communicate his knowledge to the corporation." *Strohecker v.*
9 *Mut. Bldg. & Loan Ass'n of Las Vegas*, 34 P.2d 1076, 1077 (1934) (quotation omitted).

10 There is an exception to the imputation doctrine when an agent is acting solely on
11 his own behalf, without benefiting the corporation ("adverse interest exception").
12 *Keyworth v. Nev. Packard Mines Co.*, 186 P. 1110, 1113 (Nev. 1920). This exception is
13 designed to protect the corporation from "outright theft or looting or embezzlement." *In re*
14 *Amerco Derivative Litig.*, 252 P.3d at 695 (quoting *Kirschner v. KPMG LLP*, 398 N.E.2d
15 941, 952 (N.Y. 2010)). Under the adverse interest exception, the agent's actions are not
16 imputed to the corporation and thus the running of the statute of limitations is not
17 triggered by the agent's knowledge of the facts constituting the fraudulent conduct.

18 The adverse interest exception itself has an exception for agents who are the sole
19 agent or shareholder of a corporation ("sole actor rule"). Under Nevada's sole actor rule,
20 if an agent and the principle are one and the same, the agent's knowledge will be
21 imputed to the corporation even if his actions are against the corporation's interests. *Id.*
22 at 695-96 ("Pursuant to this rule, an agent's knowledge is imputed to the corporation
23 because the principle and agent are one and the same.") (quotation omitted). "The
24 rationale for this rule is that the sole agent has no one to whom he can impart his
25 knowledge, or from whom he can conceal it, and that the corporation must bear the
26 responsibility for allowing an agent to act without accountability." *In re Personal & Bus.*
27 *Ins. Agency*, 334 F.3d 239, 243 (3d Cir. 2003) (quotation omitted).

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1 In their briefs and in oral argument, the parties agreed that James Rhodes was
2 acting as a sole actor and, thus, his actions were imputed to the corporation. (See dkt.
3 no. 25 at 9.) Applying the sole actor rule, the three year statute of limitations has run on
4 all acts that occurred prior to March 31, 2006, and Counts 1 and 2 are time-barred as
5 they relate to these acts. In response, the Litigation Trust urges this Court to adopt the
6 doctrine of adverse domination, which it argues would effectively toll the statute of
7 limitations and retain Counts 1 and 2.

8 The doctrine of adverse domination is applied either to delay the accrual of a
9 cause of action or to toll a statute of limitations in situations in which a corporation brings
10 claims against its directors for injuries to the corporation. *Hecht v. Resolution Trust*
11 *Corp.*, 635 A.2d 394, 402 (Md. 1994). Jurisdictions that adopt the adverse domination
12 doctrine typically apply either the “disinterested majority” version or the “single
13 disinterested director” version. *Id.* at 406. Both versions allow tolling a statute of
14 limitations when a culpable individual, or individuals, are in charge and impose total
15 control over a corporation. *See id.* The rationale behind the adverse domination doctrine
16 is that directors are unlikely to initiate actions that could reveal their own wrongdoing.
17 *See Resolution Trust Corp. v. Gardner*, 798 F. Supp. 790, 795 (D.D.C. 1992). Nevada
18 has not adopted the adverse domination doctrine, as both parties acknowledge. *See*
19 *USACM Liquidating Trust v. Deloitte & Touche*, No. 11-15626, 2013 WL 1715532, at *2
20 (9th Cir. April 22, 2013).

21 Not only has the Nevada Supreme Court failed to adopt the adverse domination
22 doctrine, the Litigation Trust has not demonstrated that it is likely. First, this Court has
23 previously declined to find that the Nevada Supreme Court is likely to adopt the doctrine.
24 *See USACM Liquidating Trust v. Deloitte & Touche LLP*, 764 F. Supp. 2d 1210, 1232 (D.
25 Nev. 2011). Second, as applied to this case, the doctrine of adverse domination would
26 be in direct conflict with Nevada’s sole actor rule and thus Nevada’s firmly established
27 law. Under Nevada’s sole actor rule, James Rhodes’ acts are imputed to the corporation
28 even if they are found to be against the corporation’s interests, thus triggering the statute

1 of limitations. In arguing for the adverse domination doctrine, the Litigation Trust relies
2 on the same set of facts used to establish that the sole actor rule applies to demonstrate
3 that the statute of limitations should instead be tolled. (See, e.g., dkt. no. 28 at 25
4 (“Given that James Rhodes (through Sagebrush) completely dominated and controlled
5 the Debtors at all relevant time periods, the doctrine of adverse domination is
6 implicated.”) (citation omitted).) A finding by this Court that the adverse domination
7 doctrine should apply under these circumstances would not only extend a doctrine never
8 before applied in Nevada, it would also negate the implications of Nevada’s established
9 sole actor rule. This Court, therefore, declines to find that the adverse domination
10 doctrine applies.¹

11 The Court grants the Rhodes’ Defendants Summary Judgment Motion as it
12 relates to Counts 1 and 2 and overrules the Litigation Trust’s objections to the R&R. The
13 R&R is adopted as to Counts 1 and 2.

14 **C. Count 14**

15 Count 14 is a claim for declaratory relief in which the Litigation Trust requests a
16 declaration that: (1) Debtor Rhodes Ranch General Partnership (“RRGP”) was never
17 validly divested of its 99% membership interest in Gypsum Resources, LLC (“Gypsum”);
18 and (2) RRGP still holds a 99% interest in Gypsum. (See dkt. no. 28 at 2.) Both parties
19 moved for summary judgment on Count 14 and the Bankruptcy Court recommended that
20 Count 14 be dismissed in its entirety. The Litigation Trust objects to this
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23 ¹At oral argument, the Litigation Trust argued that the sole actor rule and the
24 adverse domination doctrine are compatible. As support, the Litigation Trust asserted
25 that several jurisdictions have incorporated both doctrines, but it failed to provide
26 examples of such jurisdictions. The statutory schemes described in cases that the
27 Litigation Trust did mention in oral argument and in the briefs, namely cases from
28 Maryland, Oregon, and Kansas, are not sufficiently analogous to the Nevada sole actor
rule to support the Litigation Trust’s assertion. See *F.D.I.C. v. Smith*, 980 P.2d 141 (Or.
1999), *Resolution Trust Corp. v. Scaletty*, 891 P.2d 1110 (Kan. 1995), *Hecht v.
Resolution Trust Corp.*, 635 A.2d 394 (Md. 1994). In any event, the Court is not
persuaded that the Nevada sole actor rule is compatible with the adverse domination
doctrine as applied to this case.

1 recommendation, arguing that RRGP's ownership interest was never validly transferred.
2 (See dkt. no. 28 at 7-8.)

3 Gypsum was created on March 3, 2003. (See dkt. nos. 28 at 2; 34 at 5.) An
4 operating agreement was created for Gypsum ("Original Operating Agreement") that
5 listed RRGP as possessing a 99% membership interest and the James Michael Rhodes
6 Irrevocable Children's Education Trust ("Irrevocable Trust") as possessing a 1% interest.
7 (See *id.*) Both parties signed the Original Operating Agreement. (See dkt. no. 29 at APP
8 50.) A second operating agreement ("Amended Operating Agreement") was
9 subsequently created, which listed in the recital the following members and their
10 ownership interests: (1) Sagebrush Enterprises (.99%); (2) Sedora Holdings (92.429%);
11 (3) Rhodes Ranch LLC (5.581%); and (4) the Irrevocable Trust. (See dkt. nos. 29 at APP
12 51, 74; 34 at 7.) RRGP was not listed as a member of Gypsum on the Amended
13 Operating Agreement but the Agreement stated that RRGP accepted the Agreement
14 and it was signed by RRGP's managing general partner, Sagebrush, through that
15 corporation's president James Rhodes. (See dkt. nos. 29 at APP 73; 34 at 7.) There is
16 no dispute that the parties whose signatures were required to effectuate an amendment
17 to the Operating Agreement all signed the Amended Operating Agreement.

18 The parties disagree about whether the creation of the Amended Operating
19 Agreement constitutes a valid means to transfer RRGP's interest in Gypsum. The
20 Rhodes Defendants argue that the parties to the Original Operating Agreement were
21 entitled to amend the agreement in any fashion consistent with the Original Operating
22 Agreement's restrictions under § 10.4. The Litigation Trust argues that a valid transfer of
23 ownership interests can only occur pursuant to Article VII of the Original Operating
24 Agreement, which outlines restrictions on the transferability of membership interests.

25 Limited-liability companies may, but are not required to, adopt an operating
26 agreement. N.R.S. § 86.286(1). An operating agreement can only be adopted by
27 unanimous consent. *Id.* Once created, an operating agreement "[m]ust be interpreted
28 and construed to give the maximum effect to the principle of freedom of contract and

1 enforceability.” *Id.* § 86.286(4)(b). Modification is subject to the terms of the operating
2 agreement. *Id.* § 86.286(1). Section 10.4 of the Original Operating Agreement governs
3 amendment to the agreement. It states that “[e]xcept as provided otherwise within this
4 Agreement, this Agreement may only be amended by the unanimous written agreement
5 or consent of all the Members.” (Dkt. no. 29 at APP 47.) The parties do not dispute that
6 Gypsum was governed by the Original Operating Agreement and that an Amended
7 Operating Agreement was created with the unanimous consent of all parties.

8 The Court finds that amending the Operating Agreement constitutes a valid
9 means to transfer RRGP’s membership interests in Gypsum. The Amended Operating
10 Agreement complied with the requirements of both N.R.S. § 86.286 and the Original
11 Operating Agreement § 10.4. Paragraph F of the Amended Operating Agreement
12 expressly states that the amendment was made “in order to reflect the changes in the
13 ownership of member interests set forth above.” (See dkt. no. 29 at APP 51.) In fact, the
14 Amended Operating Agreement’s recital recorded the transfer of ownership interests that
15 it effectuated. (See *id.*) In Nevada, statements in the recitals to an agreement are
16 conclusively presumed to be true. N.R.S. § 47.240(2). The recital of the Amended
17 Operating Agreement, made pursuant to the Original Operating Agreement’s terms, is
18 therefore conclusively presumed to be true.

19 Finally, recognizing amendment of the operating agreement to be a valid avenue
20 through which membership interests may be transferred does not, as the Litigation Trust
21 asserts, render Article VII of the Original Operating Agreement meaningless. Section 7.1,
22 titled “Permitted Transfers,” outlines four types of transfer that may occur. Section 10.4
23 does not negate these forms of transfer. Instead, it allows the members to unanimously
24 agree to modify the membership agreement, including the members and membership
25 interests themselves. Article VII remains the operative section for determining how
26 transfer can be effectuated within the operative agreement, i.e. without unanimous
27 agreement or consent to modification of the document as a whole. The parties elected to
28 effectuate the transfer of RRGP’s membership interests by way of an amendment to the

1 Operating Agreement instead of utilizing the process in Article VII. This method of
2 transfer does not render Article VII meaningless and is consistent with the express terms
3 of the Operating Agreement.

4 The Court need not reach the parties' arguments regarding Article VIII as it finds
5 that RRGP performed a valid transfer of its membership interests through amendment to
6 the Original Operating Agreement, pursuant to § 10.4. The Rhodes Defendants rely
7 upon financial, tax, and audit records to argue that RRGP did effectuate a transfer of its
8 membership interests in Gypsum. The Court finds that these records are not relevant to
9 the threshold legal issue of whether the transfer of RRGP's membership interest was
10 valid under the Original Operating Agreement. This is because even post transfer
11 conduct consistent with the transfer would not rescue an otherwise invalid transfer. The
12 Court therefore overrules the Litigation Trust's objections to the Bankruptcy Court's
13 recommendation regarding Count 14 and the R&R is adopted as it relates to Count 14.

14 **D. Count 16**

15 Count 16 is raised by the Litigation Trust as an alternative claim should the Court
16 find that the transfer of Gypsum is valid. In Count 16, the Litigation Trust argues that if
17 the transfer is considered valid, it should be found fraudulent under 11 U.S.C. § 544(b)
18 and N.R.S. § 112.180. (Case no. 12-01099, dkt. no. 1. at 61.) The Rhodes Defendants
19 argue in their Motion for Partial Summary Judgment that Count 16 should be dismissed
20 because it is time-barred. The Bankruptcy Court recommended that summary judgment
21 be denied, stating that the Rhodes Defendants had not met their burden in
22 demonstrating that the statute of limitations has run. (See dkt. no. 25 at 18.) The statute
23 of limitations for Count 16, the Bankruptcy Court found, is either four (4) years after the
24 fraudulent transfer or one (1) year after the transfer was or reasonably could have been
25 discovered ("discovery rule"). (See *id.* (citing N.R.S. § 112.230).)

26 In their objections, the Rhodes Defendants state that the Bankruptcy Court's
27 characterization of the applicable statute of limitations is correct for claims under N.R.S.
28 § 112.180(1)(a), alleging actual intent, but not for claims under § 112.180(1)(b).

1 Defendants correctly assert that the one-year discovery rule, as an alternative to the
2 four-year statute of limitations, is only applicable to fraudulent transfers alleged under
3 N.R.S. § 112.180(1)(a). See N.R.S. § 112.230.

4 In response, the Litigation Trust explains that Count 16 only raises claims under
5 N.R.S. § 112.180(1)(a) and thus the Bankruptcy Court's application of the one-year
6 discovery provision was correct. Considering the face of the Complaint and the Litigation
7 Trust's representations in both its brief and in the December 19, 2013, hearing, this
8 Court construes Count 16 to allege only an actual intent fraud claim under N.R.S.
9 § 112.180(1)(a). As a result, the statute of limitations, as the Bankruptcy Court identified,
10 includes the discovery rule. See N.R.S. § 112.230(1). Applying the discovery rule, there
11 remains a genuine issue of material fact regarding when the last unsecured creditor
12 discovered, or reasonably could have discovered, facts giving rise to the actual intent
13 avoidance claim. The Rhodes Defendants conceded this point during the December 19,
14 2013, hearing. This Court therefore adopts the Bankruptcy Court's recommendation
15 regarding Count 16 and denies summary judgment on that claim.


16 **V. CONCLUSION**

17 The Court notes that the parties made several arguments and cited to several
18 cases not discussed above. The Court has reviewed these arguments and cases and
19 determines that they do not warrant discussion as they do not affect the outcome of the
20 Motion.

21 It is therefore ordered that the Bankruptcy Court's Report and Recommendation
22 (dkt. no. 25) is adopted in full.

23 It is further ordered that the Rhodes Defendants' Joint Limited Objection (dkt. no.
24 26) and the Litigation Trust's Objections (dkt. no. 28) are overruled.

25 DATED THIS 27th day of December 2013.

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27 _____
28 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE